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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,713	11/14/2003	Gil H. Choi	PB515P1C1	9281
22195	7590	04/16/2004	EXAMINER	
HUMAN GENOME SCIENCES INC INTELLECTUAL PROPERTY DEPT. 14200 SHADY GROVE ROAD ROCKVILLE, MD 20850			GRASER, JENNIFER E	
			ART UNIT	PAPER NUMBER
			1645	

DATE MAILED: 04/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/712,713	CHOI, GIL H.
	<b>Examiner</b>	<b>Art Unit</b>
	Jennifer E. Graser	1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) \_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) 1-21 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. ____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
Paper No(s)/Mail Date ____ .	6) <input type="checkbox"/> Other: ____ .

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## **DETAILED ACTION**

### *Election/Restriction*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-8, drawn to an isolated nucleic acid, host cells and recombinant vectors comprising said nucleic acid and recombinant methods using said nucleic acid, classified in class 536, subclass 23.7. NOTE: There are 74 nucleic/amino acids recited in Table 1. Each nucleic acid represents a single invention. Applicants must elect a single nucleic acid by SEQ Identifier. This is a Restriction, not a species election.
  - II. Claims 9-11, drawn to isolated polypeptides, classified in class 530, subclass 350. 23.7. NOTE: There are 74 nucleic/amino acids recited in Table 1. Each amino acid represents a single invention. Applicants must elect a single amino acid by SEQ Identifier. This is a Restriction, not a species election.
  - III. Claims 12 and 13, drawn to antibodies and hybridomas, classified in class 530, subclass 387.1. NOTE: Applicants must elect a single antibody by the corresponding amino acid to which it binds, i.e., a single sequence identifier listed in Table 1. This is a Restriction, not a species election.
  - IV. Claim 14 , drawn to vaccines, classified in class 424, subclass 234.1. NOTE: There are 37 amino acids recited in Table 1. Applicants must elect a single protein by SEQ Identifier to be examined in the vaccine. If a multivalent

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vaccine is being claimed, not all 37 amino acids will be examined. A reasonable number, i.e., 3 will be considered. This is a Restriction, not a species election.

- V. Claim 15, drawn to a method of preventing comprising administering a polypeptide of claim 9, classified in class 424, subclass 256.1. NOTE: There are 37 amino acids recited in Table 1. Applicants must elect a single protein by SEQ Identifier to be examined in this method of prevention. This is a Restriction, not a species election.
- VI. Claims 16, drawn to a method of detecting Staphylococcus nucleic acids through hybridization, classified in class 435, subclass 6. NOTE: There are 74 nucleic/amino acids recited in Table 1. Each method comprising a different nucleic acid represents a single invention. Applicants must elect a single amino acid by SEQ Identifier. This is a Restriction, not a species election.
- VII. Claim 17, drawn to a method of detecting Staphylococcus nucleic acids through PCR, classified in class , subclass . NOTE: There are 74 nucleic/amino acids recited in Table 1. Each method comprising a different nucleic acid represents a single invention. Applicants must elect a single amino acid by SEQ Identifier. This is a Restriction, not a species election.
- VIII. Claim 18, drawn to kits comprising a polypeptide and a detecting means, classified in class 435, subclass 975. NOTE: There are 37 amino acids recited in

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Table 1. Applicants must elect a single protein by SEQ Identifier to be examined in this kit. This is a Restriction, not a species election.

IX. Claims 20 and 21, drawn to a method of detecting a polypeptide, classified in class 435, subclass 7.4. NOTE: There are 37 amino acids recited in Table 1.

Applicants must elect a single protein by SEQ Identifier to be examined in the claimed method.. This is a Restriction, not a species election.

2. The inventions are distinct, each from the other because of the following reasons:

Groups I, II and III are drawn to three biologically, chemically, and structurally different products and therefore are patentably distinct and independent from one another. Groups II and VIII are patentably distinct and independent from one another because Group II does not require a detecting means and is not in kit format. Groups II and IV are patentably distinct from one another because Group IV requires a carrier or excipient and is drawn to a multivalent vaccine.

Inventions II and V are related as product and process of use. The inventions can be

shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP

§ 806.05(h)). In the instant case, the polypeptides of Group II may be used in a materially different process than a method of preventing, i.e, they may be used in detection methods.

Inventions II and IX are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product

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as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the polypeptides of Group II may be used in a materially different process than a method of detecting *Staphylococcus*, i.e, they may be used in immunological methods to raise antibodies.

Inventions I and VI are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the nucleic acids of Group I may be used in a materially different process than in hybridization detection methods, i.e, they may be used in recombinant methods to produce a protein. Inventions I and VII are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the nucleic acids of Group I may be used in a materially different process than in PCR, i.e, they may be used in recombinant methods to produce a protein.

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Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, as shown by their different classification, and because the literature search for the Groups would not be coextensive, restriction for examination purposes as indicated is proper.

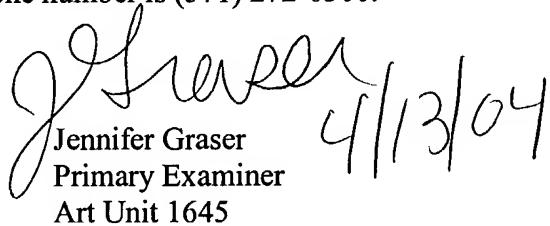
3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

4. Correspondence regarding this application should be directed to Group Art Unit 1645. Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 via the PTO Fax Center located in Remsen. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The Group 1645 Fax number is (703) 872-9306 which is able to receive transmissions 24 hours/day, 7 days/week.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Graser whose telephone number is (571) 272-0858. The examiner can normally be reached on Monday-Friday from 7:00 AM-4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith, can be reached on (571) 272-0864.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-0500.



Jennifer Graser  
Primary Examiner  
Art Unit 1645